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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. [redacted]57

CHARLES COHON, IRVING SIRBU, JACK DORIAN, WALTER MATOFF, CATHERINE CARELLA, MICHAEL CARELLA and PASQUALE MANISCALCO,

Appellants,

vs.

JAMES O. REIMEL, Director of the Department of Alcoholic Beverage Control of the State of California,

Respondent.

Appeal from the Judgment of the Court of Appeal of the State of California, First Appellate District, Division One, and Numbered Therein Nos. 22,905, 22,906, 22,994, 22,995, 23,282

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

PRIOR PROCEEDINGS

This is an appeal by seven individuals, all retail liquor licensees, whose actions were consolidated for

appeal in the Court of Appeal of the State of California and who appeal herein from the decision of the California Court of Appeal rendered November 21, 1967 (reported in 64 Cal. Rptr. 26, 256 Advance Cal. App. 188), in which a rehearing was denied on December 15, 1967 and a hearing of the Supreme Court of California was denied on January 17, 1968. The aforesaid decision of the Court of Appeal (which is appended hereto as Appendix A), reversed the order of Joseph Karesh, Judge of the Superior Court, State of California In and For the City and County of San Francisco, denying a writ of mandate directed to the Alcoholic Beverage Appeals Board, State of California, which held in favor of each of the Appellants herein in five unreported judgments which are attached hereto as Appendix B.

GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED

Appellants Cohon, Sirbu, Michael Carella, Catherine Carella and Pasquale Maniscalco had their licenses revoked by the Department of Alcoholic Beverage Control, State of California and Appellants Dorian and Matoff had their licenses suspended for violation of the California Mandatory Retail Price Fixing Law under which the retail prices of alcoholic beverages are set in the State of California. The licensees received these penalties for selling below the mandatory retail prices filed by the liquor distillers with the State of California in Sacramento.

The decision of the Department was reversed on State grounds (not on the Federal grounds which also were raised) by the Department of Alcoholic Beverage Control Appeals Board, State of California. The Department applied for a writ of mandate to the Superior Court to reverse the Appeals Board. The writ was denied by the Superior Court of the State of California, City and County of San Francisco and on appeal, the California Court of Appeal reversed the Superior Court and Appeals Board so that the suspension and revocations were to go into effect. The judgment of the Court of Appeal of the State of California from which review is sought, was rendered November 21, 1967. A rehearing was denied on December 15, 1967 and a hearing was denied by the Supreme Court of the State of California on January 17, 1968. A Notice of Appeal to the United States Supreme Court was filed on April 8, 1968 in the Court of Appeal of the State of California.

This is an appeal pursuant to 28 U.S.C.A. 1257 (2). Among the cases sustaining jurisdiction are *Seagram & Sons v. Hostetter,* 384 U.S. 35, 16 L. Ed. 2d 336, 86 Sup. Ct. 1264; *Standard Oil Company of California v. Johnson,* 316 U.S. 481, 86 L. Ed. 1611, 62 Sup. Ct. 1168.

Appellants have at all stages of the proceedings alleged that the Mandatory Retail Price Fixing Law for the pricing of alcoholic beverages in the State of California violates the Fifth and Fourteenth Amendments to the United States Constitution and also violates the Sherman Anti-trust Act, 15 U.S.C.A. §§ 1 and 2, even as amended by the Miller Act, 15 U.S.C.A. § 1 and the

McGuire Act, 15 U.S.C.A. § 45. The California laws which appellants claim to be in violation of United States Constitution and the Federal Anti-trust Act, are California Business and Professions Code, § 24755, a copy of which is attached hereto as Appendix C and the section of the California Administrative Code dealing with price fixing, Title 4, California Administrative Code § 99, attached hereto as Appendix D.

QUESTIONS PRESENTED BY THIS APPEAL

The questions presented by the appeal herein are as follows:

1. Whether or not the California Mandatory Liquor Price Fixing Laws are invalid as being violative of the Anti-trust laws of the United States (15 U.S.C.A. §§ 1, 2 and 45). § 24755 of the Business and Professions Code of the State of California and Title 4, California Administrative Code § 99, the administrative regulations which carry out the liquor price fixing laws of California, provide for price fixing methods which are a per se violation of the Sherman Act and do not come within the exemptions of the Miller-Tydings or McGuire acts. Prior to 1961, the California statutes required that branded alcoholic beverages in fair and open competition could be fair traded in California upon a price established by a contract or agreement. The amendment in 1961 of § 24755 (in response to a finding by the Superior Court, State of California, In and For the City and County of San Francisco, that a revocation was improper because there had been no finding that the items were in fair and open competi-

tion as required by the statute and the amendments to the Sherman Act, 15 U.S.C.A. § 1 and § 45) eliminated the necessity of a contract or agreement and eliminated the requirement that the commodity be in fair and open competition. Attempts to show the absence of fair and open competition were almost always refused when it was a requirement of the statute and now that it is not even made a requirement, there can be and need be no showing made of the presence or absence of this competition.

Minimum price fixing by agreement or compulsion is illegal per se under the Federal Anti-trust Legislation unless the Federal exemption statutes apply. This is true even in the case of Liquor. See *Schwegmann Brothers v. Calvert Distillers Corp.,* 341 U.S. 384, 386-388 (1950). The California statute does not come under any exemption.

2. It is next contended that § 24755 of the Business and Professions Code and Title 4, § 99 of the Administrative Code are violative of the Fifth and Fourteenth Amendments to the United States Constitution and more particularly, of the Due Process clause of the Fifth Amendment and the Equal Protection clause of the Fourteenth Amendment to the Constitution. This statute sets up privileges for the oligopolists who run the liquor industry that are not available to any other industry. There is no valid reason for this distinction or for the fact that the statute sets up two different trading areas within the State of California. There is no legitimate purpose for this discriminatory statute nor is it a reasonable restriction.

FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

The facts of the consolidated cases below are as follows:

Petitioners' licenses to sell alcoholic beverages in the State of California were suspended or revoked for failure to comply with Section 24755 of the Business and Professions Code of the State of California. This section is the "mandatory price-fixing of liquor statute" and provides that it is a violation of the law for retailers to sell branded distilled spirits at prices below the price filed by the manufacturer or owner of the brand. The Petitioners herein are holders of off-sale general liquor licenses issued by the Department of Alcoholic Beverage Control of the State of California against whom the Department filed accusations alleging the sale of branded distilled spirits at prices lower than the stipulated minimum retail schedules filed with the Department. After hearing by the Department, Petitioners Gohon and Sirbu and Carella and Maniscalco had their licenses revoked while Darian and Matoff had their licenses suspended. On appeal to the Alcoholic Beverage Control Appeals Board, the Department was reversed on the basis that the evidence did not support the Department's finding that the licensees sold at prices "below the minimum retail price schedule duly filed." This ruling was upheld by the Superior Court but was reversed on appeal by the California Court of Appeal, and hearing was denied by the California Supreme Court.

The aforesaid questions concerning the United States Constitution and Federal Anti-trust laws have

been consistently raised in each stage of the proceedings in all of the consolidated actions. In the lower stages, all of the Appellants were represented by the same counsel (who died before the cases reached the Court of Appeal) and in his first pleading entitled "Notice of Defense" in each of the actions, (e.g., In the Matter of the Accusation against Michael Carella and Pasquale Maniscalco, Reg. 2423) he raised, on page 2, the argument that § 24752 - § 24755 inclusive, of the Business and Professions Code and Rule 99 of Title 4 of the California Administrative Code, violated § 1 and § 2 of the Sherman Anti-trust Act. On page 4, said Sections were alleged also to violate the Fifth and Fourteenth Amendments to the Constitution of the United States.

In the Notice of Appeal from the original hearing by the Department of Alcoholic Beverage Control, on pages 2 and 4, again the United States Constitutional and Anti-trust arguments were raised.

Before the Alcoholic Beverage Control Appeals Board which reversed the decision of the Department (See page 1 of the decision under Reg. 2423 In the Matter of Carella and Maniscalco attached hereto as part of Appendix B), the Appeals Board stated that the questions of the constitutionality of the statute and the applicability of the Anti-trust laws were raised, but the Board in its opinion only dealt with whether the price schedules were published in accordance with the requirements of the statute.

In the Reporter's Transcript in the various cases there is testimony to show the lack of fair and open

competition in violation of the Anti-trust laws and also to show by such testimony the unreasonableness of the statute. See: e.g. Carella and Maniscalco, Reg. 2423 Reporter's Transcript, pages 24 to 26, where in the testimony of Charles Hammer, Division Sales Manager of Fleischman Distilling, it was brought out that the wholesalers and distillers confer as to what price should be filed. The price so arrived at is then the mandatory price at which retailer must sell the item and that the consumer must pay to the retailer. It is pointed out therein that this consultation is done with wholesalers who have exclusive representation of brands of various distillers. It is further pointed out that there is no State control whatsoever over the price that is filed and that the statute provides for no such State supervision, but only states that the price which distillers desire to file is the one at which the item must be sold.

Further evidence of this law as being purely for the liquor distillers and wholesalers and not for the public has been attempted to be brought out in other cases challenging the State liquor pricing laws before the California courts. In the Supplemental Brief in the California Supreme Court in *Wilke & Holzheiser v. Department of Alcoholic Beverage Control,* 65 Cal.2d 349, 420 P.2d 735 (discussed infra) there was an attempt to introduce into evidence the speech of Malcolm E. Harris, at that time Director of the California Department of Alcoholic Beverage Control. In this speech, which was refused in evidence, Mr. Harris noted numerous practices existing in the liquor indus-

try which pointed out lack of free and open competition. In his speech before the liquor wholesalers and distillers, Mr. Harris said that:

> "At various times in the past nearly everyone in this room, either individually or through your trade associations, has complained to me that Fair Trade violations damage your business. The sections I have quoted give you the opportunity to collect for the damages you have alleged. Even though you may prove only one cent of damages, at least you will put the offending retailers on notice that you mean business with your Fair Trade contracts. Of course, if no suits for damages are filed after the Department has furnished evidence of violations, two logical conclusions could be drawn: First, *no one has been damaged* (emphasis added), and second, if no one has been damaged by Fair Trade violations, the state should not use its police power to enforce fair trade."

It is a clear statement by the Director that the purpose of fair trade is to benefit the distillers and not the public. He is stating that if the distillers and wholesalers are not damaged enough so as to want to institute actions themselves, then no one is damaged and the State should not enforce the provisions. Mr. Harris is now Vice President of the Distilled Spirits Institute, Inc., an organization of distillers.

The Unconstitutionality of the State statute was also raised in the State Court of Appeal wherein, e.g., the violation of the Anti-trust laws was pointed out at page 74 of the Reply Brief of respondents, Carella and Maniscalco. The Court of Appeal, at page 15, in ruling on whether or not the provisions of § 24755 are "so

arbitrary as to amount to a denial of due process of law as guaranteed by Federal and State Constitutions" held that the matter was disposed of by the California Supreme Court in *Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control,* 65 Cal.2d 349. It further held that the removal of fair and open competition from the statute did not make it violative of the laws of the United States.

A SUBSTANTIAL FEDERAL QUESTION IS INVOLVED IN THE PROPOSED APPEAL

Petitioners allege that Section 24755 of the California Business and Professions Code violates the Constitution of the United States in that it is violative of the Due Process Clause of the Fifth Amendment and of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and further that it is in conflict with Sections 1 and 2 of the Sherman Anti-trust Act (15 U.S.C.A. 1 and 2). This State statute has been before the California Supreme Court twice in the last eight years, *Allied Properties v. Department of Alcoholic Beverage Control,* 53 C.2d 141, 346 P.2d 737, and *Wilke & Holzheiser v. Department of Alcoholic Beverage Control,* 65 C.2d 349, 420 P.2d 735.

The statute, as stated, is California's mandatory price fixing statute which provides for manufacturers to publish the price at which their brands are to be sold and the retail licensees are subjected to fines or suspension and/or revocation of license for sale below the filed price. In the *Allied Properties* case, *supra,*

Superior Court Judge Albert Wollenberg (presently a United States District Court Judge for the Northern District of California, Southern Division) found the statute Unconstitutional. On appeal, by a two to one decision of the California Court of Appeal, he was reversed and the statute was found Constitutional. In 1959, by a four to three decision of the Supreme Court of the State of California, the Court of Appeal was affirmed and the statute was found Constitutional. Neither an appeal nor a petition for certiorari were taken to the United States Supreme Court in that case.

In the case of *Wilke & Holzheiser v. Department of Alcoholic Beverage Control,* the California Supreme Court, by a five to two decision in 1966, again declared the statute Constitutional. After the California Courts' decision was final, application was made to a three Judge District Court which decided *Wilke & Holzheiser v. Department of Alcoholic Beverage Control,* 266 F. Supp. 168 and held, at page 170 that:

> "A judgment upon the merits of the State Court action is res judicata in a subsequent Federal Court action where the parties in the subject matter are the same. This is true not only with regard to matters actually presented to sustain or defeat the right asserted but also as respects any other available matters which might have been presented to that end . . . Plaintiff's remedy, after the final judgment of the State Courts, is that of appeal or petition for certiorari to the United States Supreme Court."

In that action, it was not economically possible for the single licensee, after so many years of struggle, to

go further on appeal to the United States Supreme Court. This is therefore the first time that application has been made to the United States Supreme Court for a ruling on the Constitutionality of California's liquor price fixing statute.

In addition to the split which exists among the California Judges themselves as to the Constitutionality of the statute (in the original case involving liquor price fixing, *Allied Properties,* six Judges held the statute Constitutional and five held it Unconstitutional), there is a sharp division of authority among the highest courts of other states as to the Constitutionality of similar price fixing statutes. Almost every one of the other State courts which has been confronted with similar liquor price fixing statutes has held them Unconstitutional. In *Reynolds v. Louisiana Board of Alcoholic Beverage Control,* La. 1966, 185 So. 2d 794, the Louisiana Supreme Court held its mandatory price fixing statute (similar to that of California) Unconstitutional as violative of the Due Process Clause of the Federal Constitution. The court states at page 812 that the statute

> "bears no real or substantial relation to the general health, morals or welfare of the people. At best, it represents an ignoble flight from competition."

A petition for certiorari was filed in the United States Supreme Court and was denied on November 14, 1966, US Law Week 3173.

In addition, the California decision is in conflict with the decision of the Supreme Court of New Mexico in

Drink, Inc. v. Babcock, 421 P.2d 798, in which the court stated at page 803:

> "We hold that the fair trade contract and mark-up processes of the liquor control act are manifestly unreasonable legislation and are not an appropriate exercise of the States' police power . . ."

Such acts have also been held Unconstitutional by the Florida Supreme Court in *Scarborough v. Webb's Cut-rate Drug Company,* (1942) 150 Fla. 754, 8 So.2d 913, where the court states at page 922:

> "The act, upon its face, is one not designed to affect the public health, safety or welfare, but is designed solely for the protection of the wholesale liquor dealer by allowing him to control the retail prices so that his consumers may be forced to sell liquor at a substantial profit . . ."

The court further stated at page 921:

> "There is not one thing in the act to indicate that there were any legislative findings that any necessity existed for the terms of the act nor is there any power or authority vested in any board to make any findings of fact in regard thereto. No hearing is provided for, no Due Process is contemplated, all of which are certainly necessary to make a price fixing act valid."

Similar price fixing statutes were held Unconstitutional by Oklahoma in *Oliver v. Oklahoma Alcoholic Beverage Control Board,* 359 P.2d 183 (1961); in Kansas in *State v. Mermes,* 358 P.2d 936 (1961); in Illinois in *Lombardo Wine Co. v. Taylor,* 95 N.E. 2d 60 and in Nebraska in *Terry Carpenter v. Nebraska Liquor Control Commission,* 120 N.W. 2d 374.

The California price fixing statute violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution because it sets up a rule for liquor retailers that does not exist for any other retailers and because, with no basis for the distinction, two different trading areas are set up within the State and the manufacturer can file one price for Northern California and another price for Southern California.

In the *Wilke & Holzheiser* (supra) and the *Allied Properties* (supra) cases, as well as herein, the California Attorney General representing the Department of Alcoholic Beverage Control, has argued that the Twenty-First Amendment to the United States Constitution prevents any challenge of the California statute based on the United States Constitution.

In the Memorandum in Opposition to the Application for Stay Pending Appeal in the Supreme Court herein, the Attorney General for the State of California cites *State Board of Equalization v. Young's Market,* 299 U.S. 59, 63-64, (1936) stating:

> "A classification recognized by the Twenty-First Amendment cannot be deemed forbidden by the Fourteenth."

In the same Memorandum, the Attorney General for the State of California makes a great point of *Schwartz v. Kelly,* 140 Conn. 176, 99 Atl. 2d 89 (1953), in which a hearing was denied by the United States Supreme Court. This case was prior to the recent line of cases in which the Court has asserted the interdependence of the Twenty-First Amendment on the other provisions

of the Constitution. Also, the Connecticut statute is somewhat different from California's in that in Conn. Gen. Stats., Vol. 6, paragraphs 30-64 and 30-65, price schedules remain in effect only for the period fixed by the Commission, are uniform throughout the State and the Commission has power to vary the minimum consumer price as the Commission deems necessary. Also, the Connecticut statute is now considerably different from California's in that § 30-68A has been added so that there are minimum markups on the price of liquor, making the pricing not wholly within the discretion of the distillers as it is in California.

The position that the Twenty-First Amendment gives the liquor industry some "privileged status" has recently been substantially altered by the United States Supreme Court. In *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 12 L.ed.2d 350, 84 Sup. Ct. 1293, the Court states at 12 L.ed.2d at page 356, that

> "To draw a conclusion from this line of decisions that the Twenty-First Amendment has somehow operated to repeal the commerce clause wherever regulation of intoxicating liquors are concerned, would be an absurd oversimplification."

Also the Supreme Court in 1966 held, in *Joseph E. Seagram v. Hostetter;* 86 Sup. Ct. 1254, that the Twenty-First Amendment must be read in light of the other Amendments of the Constitution and although the court upheld the New York law being questioned there, it clearly established the principle that the State law had to be a reasonable law and not deny the requirements of equal protection of the laws as provided

by the Fourteenth Amendment. The Court, at 86 Sup. Ct. 1261, in analyzing whether or not the New York law violated the Anti-trust Act, stated:

> "Nothing in the Twenty-First Amendment of course would prevent enforcement of the Sherman Act against such a conspiracy."

See also: *Idlewild Bon Voyage Liquor Corp. v. Epstein,* (1962) 370 U.S. 713, 8 L.Ed.2d 794, wherein the court held that there was a substantial Constitutional question raised. Here an action of the New York State Liquor Authority was being challenged.

As recently as this term, in *Burke v. Ford,* 19 L.Ed. 2d 554, (1967), the Supreme Court held Per Curiam that the District Court had jurisdiction to hear a case based on § 1 of the Sherman Act against all Oklahoma liquor wholesalers who allegedly were engaged in a statewide market division. Here, liquor was involved completely within the state's borders and Federal law was still held to apply.

The California liquor price fixing statute has been described by a California Appellate Court Judge, in his dissenting opinion in *Allied Properties v. Department of Alcoholic Beverage Control Board,* 339 P.2d at page 1024, as follows:

> "Thus, the very person or corporation that manufactures or distributes the product sets the price at which the retailer may and must sell, without any right of any kind or character on the part of any representative of the State, to challenge it for price, quality or otherwise. This, to me, is uncontrolled monopoly run riot with State sanction."

§ 24755 of the California Business and Professions Code, which sets up the price fixing statute, is a statute which is clearly written by and for the liquor distillers and on its face presently violates Federal Anti-trust laws. Whenever a judicial obstacle is created, the statute is changed. When the California Superior Court, For the City and County of San Francisco reversed a license revocation because there had been no finding that the liquor sold had been in free and open competition, the statute was changed so that free and open competition is no longer a requirement. The elimination of this requirement, as well as the discretion of liquor distillers, is clearly not in accord with the Anti-trust immunity provided for by the Miller-Tydings and the McGuire Acts and minimum price fixing by agreement or compulsion is illegal per se under the Federal Anti-trust laws unless the Federal exemption statutes apply. (See *United States v. McKesson & Robbins,* 341 U.S. 305, 309-311 (1953) and *Schwegmann Bros. v. Calvert Distillers Corp.,* 341 U.S. 384, 386-388 (1950).

Since the California statute does not provide for either free and open competition or contracts, it is not immunized from Federal Anti-trust laws. *Eastman Kodak v. Federal Trade Commission,* 2d Cir. 330 U.S. 828, clearly held that the Miller-Tydings amendment only validates retail price agreements with respect to pricing of commodities which are in effective competition with similar commodities produced by others.

California has not permitted the licensee before the California Administrative Agencies or Courts to pre-

sent evidence of lack of free and open competition before the State Hearing Board. See: *DeMartini v. Department of Alcoholic Beverage Control,* 215 Cal.App. 2d 787 and *Dave's Market v. Department of Alcoholic Beverage Control,* 222 Cal.App.2d 671.

Analogizing the mandatory price-fixing characteristics of the statute herein to those of the normal fair trade statutes, is clearly misleading. As Justice Peters of the California Supreme Court states in his dissent in *Wilke & Holzheiser v. Alcoholic Beverage Control,* 65 Advance Cal. Rptr., 385 at p. 417:

> "This, the fair trade provisions of the Alcoholic Beverage Control Act, together with the disciplinary power given the Department of Alcoholic Beverage Control directly by the Constitution, comprise a mandatory price-fixing system whereby the producers or wholesalers of branded or trademarked alcoholic beverages fix the retail prices of those beverages, and adherence to the prices is guaranteed by threat of imposition by the state of civil and criminal sanctions upon non-complying retailers."

Then Justice Peters goes on to say, at page 418:

> "The liquor fair trade law is to be distinguished from the general Fair Trade Act applicable to all branded or trademarked commodities sold at retail which are in free and open competition with others of the same general class. . . . The general act is permissive rather than mandatory. . . . It is enforced only by private suits not by criminal penalties or revocation or suspension of licenses by an administrative body."

If this Court will hear this appeal, appellants can bring before this Court facts concerning the structure of the liquor industry which show that there is no real competition between the big four distillers who control 90% of the liquor business in the United States. As former State Assemblyman Caspar Weinberger, presently Finance Director of the State of California, stated in an article in the San Mateo Times on April 28, 1964:

> "No one has satisfactorily explained why the State should allow liquor distillers and others in the business to fix and maintain prices as high as they wish when any other business that attempted to do that would be indicted and convicted under the Anti-trust laws."

The perniciousness of liquor price fixing laws is well analyzed by the "Moreland Commission on the Alcoholic Beverage Control Law," appointed by Governor Rockefeller. It was the Moreland report which caused New York to change its mandatory price fixing statute (which previously was like California's statute) and to pass the present New York statute held Constitutional in *Seagram & Sons v. Hostetter,* 384 U.S. 35, 16 L.Ed. 336, 86 Sup.Ct. 1254. The Moreland Commission found at page 1 of the report that:

> "The mandatory price controls should be eliminated because (1) New York consumers are compelled to pay unnecessarily high prices for packaged liquor, (2) competition is stifled and economical waste encouraged."

As the Commission pointed out, the only effect of mandatory price fixing could be to make drinking eco-

nomically impossible for low income groups to the benefit of the wealthy and the disadvantage of the poor. This, as argued below, would appear to be a distinction in violation of the Equal Protection Clause of the Fourteenth Amendment since, in effect, it would enact Prohibition for the poor but not for the rich.

Further, it has been pointed out to the licensees that the Supreme Court is the only court available now to rule on the constitutionality of the California statute. In *Dave's Market v. Department of Alcoholic Beverage Control,* (U.S. Dist. Ct. for No. Dist. of California, So. Div., No. 41103) a three Judge District Court was convened but sent the matter back for determination on State issues. When the case was returned to the Federal Court, the determination was made that Federal issues must necessarily have been determined along with the State issues and therefore, appeal to the Supreme Court was the only remedy. This was also essentially the decision in the District Court case of *Wilke & Holzheiser v. Department of Alcoholic Beverage Control,* 266 F.Supp. 168.

CONCLUSION

In conclusion, the effect of allowing a system within the most populous State whereby an industry dominated by four giants has powers denied to any other business, is far reaching. The effects on interstate commerce, as pointed out in *Burke v. Ford, supra,* are clear. The liquor comes into California from outside the state and the consultations that go on between wholesalers

who represent various distillers and the distillers they represent, in order to set the most profitable price, provide avenues for legalized conspiracy that can affect prices in all states. The Twenty-First Amendment allows a state to forbid the sale of liquor within its borders, but like the familiar analogy of the corporate entity, once liquor is sold within a state the laws under which it is sold must be reasonable and non-discriminatory, and they must have some rational foundation and not merely be designed to serve one powerful interest group. The Twenty-First Amendment was certainly not designed to put the liquor industry into a more favored position than it had been prior to the passage of the Eighteenth Amendment as would be the situation if the Supreme Court allows § 24755 of the Business and Professions Code of California to remain in effect.

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(Appendices Follow)